EDITOR'S NOTE

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91-1954

Supreme Court, U.S.
FILED
JUN 3 1992
OFFICE OF THE CLERK

NO._____

IN THE
Supreme Court of the United States

OCTOBER TERM
1992

EDWIN F REILLY II
Petitioner

v.

NORMAN D. CALLAN
COMMONWEALTH OF PENNSYLVANIA
Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE
UNITED STATES SUPREME COURT
FOR THE THIRD CIRCUIT
PETITION FOR WRIT OF CERTIORARI

EDWIN F. REILLY II
Counsel for Petitioner
In propria persona

ADDRESS

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QUESTIONS PRESENTED

1. Does the appellate Court's endorcement of the lower court's taking subject matter jurisdiction of a non existance trust res and failing to remand petitioners state tort action back to the state court entitle petitioner to be placed under the protection of this court?

2. Does petitioner have the right to expatriate from being a fiduciary/beneficiary in an ecclesiastical trust as a U.S. citizen, in the "several states" of the union under Erie Railroad v Tompkins 304 U.S. 64; to become a permanent citizen of the soil in Pennsylvania as a "state in this union" under Swift v Tyson 16 Peters 1?

EVIDENCE

3. Does the Third Circuit's refusal to recite bases (authorities) for its rejection of petitioners statute law and evidence of petitioners "Declaration" (filed in support of his challange to subject matter jurisdiction), deny petitioner

QUESTIONS PRESENTED cont.

access to courts exercising "judicial Power" of his home state as a permanent citizen in Pennsylvania.

LIST OF THE PARTIES

The parties are:

Edwin F. Reilly II, Petitioner

Norman D. Callan

COMMONWEALTH OF PENNSYLVANIA, Respondents

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Edwin F.Reilly II
v
Norman D. Callan
COMMONWEALTH OF PENNSYLVANIA

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U. S. DISTRICT COURT - PITTSUBUGH

Reilly v Norman D. Callan &
COMMONWEALTH OF PENNSYLVANIA

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NO._____

IN THE SUPREME COURT OF THE UNITED STATES

EDWIN F. REILLY II
PETITIONER

v.

NORMAN D. CALLAN
COMMONWEALTH OF PENNSYLVANIA
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI
to the
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

PETITIONER, Edwin F. Reilly II, respectfully prays that a Writ of Certiorari issue to review the Judgment Memorandum of the U.S. Court of Appeals for the Third Circuit, to overturn the lower court's issuing of Judgment in favor of appellees and against appellant.

OPINIONS BELOW

The U.S. Court of Appeals JUDGMENT ORDER filed, April 30, 1992 appears in Appendix A1.

The MEMORANDUM ORDER of the district court appears at A2.

The Court of Appeals' Memorandum in this matter was tried, on April 30, 1992. The appellate court denied appellant's motion to dismiss for lack of subject matter jurisdiction based on issues of law and fact as set forth in A-1. This Court's jurisdiction is invoked under 28 U.S.C.. 1254 (1).

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

The statutory provisions primarily at issue here are initially, 15 United States Statute at Large, Ch. 249-250, pps Pages 223-224, Section 1 July 27, 1868 to wit:

> "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any declaration, instruction, opinion, order, or decision of any officers of this government which denies, restricts, impairs, or questions the right of expatriation, is hereby declared inconsistent with the fundamental principles of this government.

Article I—Legislative Department of the 74th Congress 2d Session, in Document 232 Senate (1938). to Wit:

Right of Expatriation.

> The Constitution is silent of this subject, but from the very first there was recognized the right of a citizen to expatriate himself, under certain conditions and subject to proof. In Talbot v Janson* a decision on the exact point was avoided by the facts of the case where the act of leaving the country was in pursuance of a criminal purpose and not to be construed into an act of emigration), but it was indicated that in absence of a statute governing the subject, an expatriation must be bona fide, the cause of removal be lawful, the departure be entire, with intent to leave the country and settle in another. The absence of a Federal statute—there being no constitutional prohibition in the way—was commented upon, Justice Iredell stating (p.164) "it not only is a proper instance in which [the legislative power] may be exercised, but is the duty of the Legislature to make such provision * * *." It was, however, 1868, before Congress expressly recognized the right of expatriation and declared that any restrictions thereon were inconsistent with the fundamental principles of the Republic (R. S. 1999; U. S. C. 8: 15).

*3 Dall. 133 [1795]. See also Murray v The "Charming Betsey", 2 Cr. 64 [1804]; The "Venus", 8 Cr. 253 [1814]; The

"Santissima Trinidad", 7 Wheat. 283 [1822]; Inglis v Sailor's Snug Harbor, 3 Pet 99 [1830];
Shanks v Dupont, 3 Pet. 242 [1830]; Comitis v Parkerson, 56 Fed. 556 [1893]; M'Ilvaine v Coxe, 4 Cr. 209 [1808].

28 U.S.C. 1441 (a) (b), P.L.100-702

H.J.R. 192 June 5, 1933 to wit:

Joint resolution to assure uniform value to the coins and currencies of the United States.

Whereas the holding of or dealing in gold affect the public interest, and are therefore subject to proper regulation and restriction; and
Whereas the existing emergency has disclosed that provisions of obligations which purport to give the obligee a right to require payment in gold or a particular kind of coin or currency of the United States, or in an amount in money of the United States measured thereby, obstruct the power of the Congress to regulate the value of the money of the United States, and are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts. Now, therefore, be it.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law authorizing obligations to be issued by or under authority of the United States is hereby repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this resolution, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable on money of the United States; and the term "coin or currency" means coin or currency of the United States , including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations.

Sec. 2. The last sentence of paragraph (1) of subsection (b) of section 43 of the Act

entitled "An Act to relieve the existing national economic emergency by increasing agriculture purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agriculture indebtedness, to
provide for the orderly liquidation of joint-stock land banks, and for other purposes ", approved May 12, 1933, is amended to read as follows:

"All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and sues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion of their actual weight."
Approved, June 5, 1933, 4.40 p.m.

CONSTITUTION OF UNITED STATES

Article III Section 3, . . . no Attainder of Treason shall work Corruption of Blood, of Forfeiture except during the Life of the Person attainted.

Article IV Sect 4, Section 4. The United States shall guarantee to every State in this Union a Republican Form of Government.

Amendment 1, Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

Amendment 10, The powers not delegated to the United States by the Constitution, nor

prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment 11, The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

Amendment 14, "and subject to the jurisdiction thereof."

PENNSYLVANIA STATUTES

Title 20 Pennsylvania Consolidated Statutes, Chap. 61, supra, 6103. Release or disclaimer of powers or interests:

> (a) Powers and interests releasable.-Any power of appointment, or power of consumption, whether general or special, other than a power in trust which is

imperative, and any interest in, to, or over real or personal property held or owned outright, or in trust, or in any other manner which is reserved or given to any person by deed, will or otherwise, and irrespective or any limitation of such power or interest by virtue of any restriction in the nature of a so-called spendthrift trust
provision, or similar provision, may be released or disclaimed, either with or without consideration by written instrument signed by the person possessing the power of the interest and delivered as hereinafter provided, but nothing in this section shall authorize an income beneficiary of a spendthrift trust to release or disclaim his right to such income, unless as a result of the release or disclaimer the released or disclaimed income will pass to one or more of the beneficiary's descendants.

(b) Form of release or disclaimer.-A power or interest which is releasable or disclaimable may be released or disclaimed either absolutely or conditionally, and may also be released or disclaimed with respect to the whole or any part of the property subject to such power or interest, and may also be released or disclaimed in such manner as to reduce or limit such power or interest would otherwise be exercisable. No release or disclaimer or a power or of an interest shall be deemed to make imperative a power or interest which was not imperative prior to such release or disclaimer unless the instrument of release or disclaimer expressly so provides.

Title 20 Pennsylvania Consolidated Statutes, Chap. 61 supra, Section 6102. Termination of trusts:

> (c) Nothing in this section shall limit any power of the court to terminate or reform a trust under existing law.

STATEMENT OF THE CASE

This petition resulted from an original action that started in the Court of Common Pleas of Blair County Pennsylvania when then plaintiff (Reilly II) instituted a suit against Judge Norman D. Callan for ruling outside the subject matter jurisdiction from an action that Reilly II commenced against the Altoona Police Department involving alleged violations of the Motor Vehicle Code. In that case, Judge Callan refused to hear Reilly II's argument that he Reilly II, was not subject to the 14th amendment and Erie Railroad v Tompkins 304 U.S. 64 and its political law of commerce because he Reilly II, had published in the local newspaper his "Declaration" of expatriation from being a fiduciary/beneficiary as a U.S. citizen.

That Reilly II as a permanent citizen of the soil in Pennsylvania is subject to Swift v Tyson 16 Peters 1, and its civil law of commerce. In addition to Swift v Tyson supra, Reilly II bases his expatriation argument on 15 U.S. Statutes at Large Sec. 1; Right of Expatriation from Article I-Legislative Department of the 74th Congress 2d Session, in Document 232 Senate (1938); Article III Sec.3, Article IV Section 4, and Amendment I, 9, and 10 of the U.S. Constitution; Hepburn v Ellzey 2 Cranch 445, 452-453, U.S. (1805); Pennoyer v Neff 95 US at 720; U.S.C.A. Const. Amend. 14. Hanson v Denckla (1958) 357 US 235; 78 S. Ct. 1223; 2 L Ed 2d 1283; reh den 358 US 858; 3 L Ed 2d 92; 79 S. Ct. 10. Title 20 Pa. C.S. 6103 (a), (b) and 6102(c).

After Judge Callan denied the suit, Reilly II then filed suit against Callan in his individual capacity along with the Commonwealth of Pennsylvania and its several employees on August 23, 1991, in the Court of Common Pleas of Blair County, Pennsylvania. The suit was for allegedly

forcing Reilly II into the foreign jurisdiction and upon violence of conscience. Upon Reilly II filing the suit against Callan and the Commonwealth of Pennsylvania, Callan and the Commonwealth had the suit removed to the federal district court upon which Reilly II challenged the subject matter jurisdiction upon removal. Reilly II's argument upon removal was based on the fact that he expatriated from the United States and is a non 14th amendment citizen not subject to the 11th amendment and Erie Railroad v Tompkins supra, and the Federal Rules on Removal. "Although the Fourteenth Amendment was adopted subsequent to the Eleventh Amendment, the former certainty did not repeal the latter. The two must be read together." Washington v. Brantley, 352 F.Supp. 559 (1972).

Additionally Reilly II's argument evolves around the fact that he has the right to resurrect his true estate from the religious trust of the living dead that H.J.R. 192 supra, created, which

the U.S. Supreme Court Stated in Funk v United States 290 U.S. 371 (1933) is mutable at will. The Honorable Judge Smith of the U.S. District Court in his opinion dated October 29, 1991, stated that the case was a civil rights case and dismissed the case against Callan citing Mireles v Waco ____S. Ct. ____, 1991 WL 208852 (October 21 1991). Mireles v Waco involves judicial immunity for judges ruling in their judicial capacity which Reilly II has no problem with. But when a judge such as Callan rules upon a trust res that is no longer there, and he violates the very state statutes he is by law required to enforce, he is without immunity. Reilly II removed the trust res and severed the private law for public purposes that operates quasi in rem under Erie Railroad v Tompkins supra, in the "several states" of the union; returned to Pennsylvania where he is permanently domiciled; thus not subject to the laws of descent and distribution that emanates from the several states of the United States. The federal court was without jurisdiction to

effectuate the removal action in question. Judge Smith stated that "Plaintiff's argument that defendant Callan's actions were taken in the absence of jurisdiction because plaintiff is not a citizen of the United States borders on the sanctionable." For Judge Smith to make such a statement ignores all the law and facts surrounding the issue that was presented to him; that a person cannot be compelled to accept a private boon or to be made a subject to a foreign religious power that the U.S. Constitution protects against.

The Honorable Judge Smith in dismissing plaintiff's suit against the Commonwealth, cited another civil rights case, Will v Michigan State Police 491 US, 105 L Ed 2d 45, 109 S Ct. 2304. That case specifically states at pp. 46, "that the legislative history of 1983 did not indicate a clearly expressed congressional intent that the word "person" include the States of the Union." and further at pp. 55, "Our conclusion is further supported by our holdings that in enacting 1983,

Congress did not intend to override well-established immunities or defenses under the common law." and speaking of sovereign immunity, the court did recognize such doctrine at common law. But the court does recognize that there is a difference between the common law of the "states in this union" and the common law of the "several states" of the union. Judge Smith fails to realize that civil rights are either quasi in rem or in personam. His ruling was clearly quasi in rem. Nowhere in his opinion does the Honorable Judge Smith address the issues of statute law and court decisions that was presented which would have proven that his ruling quasi in rem was in error. Judge Smith by invoking the civil rights act of the Congress again subjected Reilly II to a foreign jurisdiction, i.e., private law for public purposes operating quasi in rem that is reflected in Erie Railroad v Tompkins supra, and the Federal Rules on Removal. Basically what Judge Smith did was to probate Reilly II's estate, then made a determination that Reilly II was a descendent,

then expatriated Reilly II's estate from his permanent domicile in Pennsylvania as a "state in this union" in public law for private purposes; into the private religious trust of foreign law for public purposes created by the 14th amendment, H.J.R. 192 supra and Erie Railroad v Tompkins supra. This despite the fact that Funk v United States supra, was pleaded in the Challange to Subject Matter Jurisdiction on Removal. Even in his duty as a legislative court, he violated Article I—Legislative Department of the 74th Congress 2d Session, in Document 232 Senate (1938) supra.

It appears that by the Honorable Judge Smith taking jurisdiction, he moved Title 20 Pa. C.S. 6103 (a), (b) and 6102 (c), and the case law that evolved around those statutes such as Cunnius v Reading School District 198 U.S. 458, 25 Sup.Ct. 721, 49 L. Ed. 1125, 3 Ann Cas 1121 (1905); Scott v McNeal, 154 U. S. 34, 14 Sup.Ct. 1108, 38 L. Ed. 896 (1894), into new fields. These cases deal with presumed decedents which states that the probate

of a living person is null and void. Judge Smith in this case is treating the petitioner as though the petitioner is dead in the law or a 'person in being', thus subject to the religious public trust and Erie Railroad v Tompkins supra.

PETITIONERS APPEAL TO THE THIRD CIRCUIT

On November 27, 1991, petitioner filed his Notice of Appeal. Reilly II appellant's Brief argued the following issues of law on Appeal: 15 United States Statute at Large Sec. 1; Title 8 U.S.C. Sec. 1481; Article III Section 3, Article IV Sect 4, Amendment 1, Amendment 10, Amendment 14, to the Constitution of United States; H.J.R. 192.; Title 20 Pa. C. S. 6103 (a), (b), 6102 (c).

April 30, 1992 the Third Circuit issued its Judgment Order affirming the lower court's judgment without any explanation. The court failed to address the issues of statute law presented and again the court treated appellant as though he was dead in Law. Appellant Reilly II

herewith files this petition for Writ of Certiorari to the Third Circuit Court of Appeals.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted to correct the obvious violations of law against petitioner by the lower courts. The lower courts' total disregard for serious analysis of the violations of law, and the appellate courts' refusal not only to respect the guaranteed rights of minority appellant who is a permanent citizen of Pennsylvania; thus not primarily a citizen of United States subject to the 14th amendment trust and its Erie Railroad v Tompkins decision supra; with its limited liability for the payment of debts. This calls not only for intercession by this court, but for its protection of the rights of petitioner under Swift v Tyson supra.

FEDERAL RULES OF CIVIL PROCEDURE INVOKED BY THE DISTRICT COURT

The lower court refused to accept the Challenge to Subject Matter Jurisdiction on Removal by petitioner thus invoking Federal Rules 28 U.S.C. 1441 (a) (b), as amended by the Judicial Improvements Act, P.L. 100-702, 1016, to affect taking jurisdiction of the case.

QUESTIONS PRESENTED-EVIDENCE.

Petitioner proved with his evidence and the law surrounding the facts that petitioner is not subject to a foreign power i.e., private law for public purposes that operates quasi in rem of the several states.

C O N C L U S I O N

Petitioner submits that this Court should grant certiorari here to rule, explicity, on the lower courts' moving Swift v Tyson supra, from the court of chancellery in the common law of Pennsylvania as a "state in this union" under Article IV Section 4; to the general equity of the English court of chancellery of the original Judiciary Act of 1789. This general equity

operating under Article I of the "several States" in the union via Erie Railroad v Tompkins supra. Therefore, the said removal action is unconstitutional and void.

For these reasons, and all the reasons set forth above, a writ of certiorari to the Third Circuit Court of Appeals should issue to review the Judgment Order of the court of Appeals in this matter. If this Court elects not to address the issues presented in this Petition at this time, petitioner requests that the Writ issue and that the matter be remanded to the Court of Appeals for the Third Circuit for redetermination in light of the lower court's disregard of petitioner's evidence and law filed in support-proof of his claims.

Respectfully submitted,

Edwin F. Reilly II
Petitioner

DATED: May 26, 1992

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 91-3871

EDWIN F. REILLY, II
APPELLANT

V

NORMAN D. CALLAN,
Judge in his individual capacity;
COMMONWEALTH OF PENNSYLVANIA

On Appeal from the United States Disrrict Court
for the Weatern District of Pennsylvania
(D.C. Civil No. 91-00193J)
District Judge: Hon. D. Brooks Smith

Submitted Under Third Circuit Rule 12(6)
April 29, 1992

Before: SLOVITER, Chief Judge,
GREENBERG AND COWEN, Circuit Judges

JUDGMENT ORDER

AFTER consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of te District court be and is hereby affirmed. Costs taxed against appellant.

By the Court

s/_____
Chief Judge

Dated April 30, 1992

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDWIN F. REILLY II
Plaintiff

Civil Action No. 91-193J

vs

Hon. NORMAN D. CALLAN and
COMMONWEALTH OF PENNSYLVANIA,

MEMORANDUM ORDER

SMITH, DISTRICT J.

Defendants Norman D. Callan and Commonwealth of Pennsylvania removed this pro se civil rights action by plaintiff Edwin F. Reilly, II, to this court on September 24, 1991, and filed their motion to dismiss on October 1, 1991, The defendants' brief was submitted on October 9, 1991; the plaintiff's response, styled "Motion to Challange Subject Matter Jurisdiction on Removal," was filed October 22, 1991. Having reviewed the matter, the Court dismisses plaintiff's complaint.

Plaintiff's complaint was orginally filed in the Blair County Court of Common Pleas, seeking money damages from a judge who ruled against plaintiff in a state civil suit, and from the Commonwealth of Pennsylvania. It is not clear whether the claims against the Commonwealth are based on the alleged actions of the defendant judge or on the alleged actions of several employees of the City of Altoona.

Plaintiff's complaint against the Commonwealth of Pennsylvania is dismissed. Will v Michigan State Police, 109 S.Ct. 2314 (1989). Plaintiff's complaint against defendant Callan is dismissed. Mireles v Waco,___S. Ct. ____, 1991 WL 208852 (October 21, 1991) (per curiam). Plaintiff's argument that defendant Callan's actions were taken in the absence of jurisdiction because plaintiff is not a citizen of the United States borders on the Sanctionable. The Clerk shall mark this matter closed.

BY THE COURT,

s/_____

D. Brooks Smith

United States District Judge

DATE: October 29, 1991.

DECLARATION OF INDEPENDENCE

I, Edwin F. Reilly II in the name of the Almighty Creator, the Declaration of Independance, the Original Constitution of the United States of America, solemnly Publish and Declare of Right, to be Free and Independant from the Incorporated Democracy of the District of Columbia and all Political connection with the incorporated Democracy of the District of Columbia is hereby totally dissolved.

I, Edwin F. Reilly II have full power to Contract, establish Commerce, and to do all Acts and Things which independent Sovereign Individuals have a right to do. And for support of this, Declaration with a firm reliance on the protection of the supreme laws of the United States of America, Edwin F. Reilly II pledges my life, Fortune and Sacred Honor to the Cause of preserving and defending all

principles of the Declaration of Independence, the Original Constitution of the United States of America and the first 10 Amendments of the Bill of Rights of our Great Republic.

So done on this 3rd day of July, 1990, signed,

Edwin F. Reilly II

Notary Seal
Vada M. McDonald
Notary Public

Altoona, Blair County
My Commission Expires
August 13, 1990

A copy of the above Declaration of Independence was published in the Altoona Mirror Newspaper in Altoona, Pennsylvania on July 6, 1990.

A8

PROOF OF SERVICE

I, David A. Hoover, DECLARE AS FOLLOWS:

I reside in the state of Pennsylvania, resident of Blair County. I am over the age of eighteen years, and am not a party to this action. On June 1, 1992 I served the within doucment:

"Petition for Writ of Certiorari to the Third Circuit Court of Appeals, w/Service of Process," on the parties herein named, by placing the required number of copies in each package addressed to the parties below, and offered them to the U.S. Postal person to affix first-class postage, with Return Receipt Request (*), where indicated below), in Altoona, Pa.

*Clerk, U.S. Supreme Court (40+2 copies)
One First Street, N.E.
Washington, D.C. 20543

Attorney for Respondent (3 copies)
Kenneth Wilson, Esquire
1515 Market Street, Suite 1414
Philadelphia, Pa. 19102

Commonwealth of Pennsylvania. (3 copies)

Glona Tischuk, Esquire Exr
4th Floor, Manor Complex
564 Forbes Ave. - Pittsburgh, Pa. 15219

I declare under penalty of perjury the foregoing is true and correct.

signed David A Hoover